IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2004

CORAM

THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT PETITION No.41404 of 2002
and
WPMP No.61273 of 2002
and
WVMP No.691 of 2003

G.Gengavarajan,
Proprietor Proddatur Cuddapah
Lorry Transport, D-13, CMDA Truck
Terminal Complex, Madhavaram,
Chennai-600 110. .. Petitioner

-Vs-

1.Chennai Metropolitan Development
Authority, Rep., by the Superintending
Engineer-II, Construction Wing,
No.1, Gandhi Irwin Road, Egmore,
Chennai-600 008.

2.M/s.Business Leader, rep., by
G.Renganathan, No.9, Dhanammal
Street, Chetpet,
Chennai-600 031. .. Respondents

Writ petition filed under Article 226 of the Constitution of
India praying for the issue of a Writ of Certiorarified Mandamus, calling for
the records in tender notice No.5/2002-2003 on the file of the first
respondent dated 23.10.2002 published in Thinaboomi dated 26.10.2 002 and to
quash the same consequentially allotting the contract to the petitioner.

!For Petitioner : Mr.V.Ayyadurai

For Respondent-1 : Mr.N.Sampath

For Respondent-2 : Mr.R.Achuthan

:ORDER

The petitioner has filed the above writ petition to call for the
tender notification dated 23.10.2002 which was published in a newspaper on

26.10.2002 by the first respondent, to quash the same and consequently allot the contract to the petitioner.

2. According to the petitioner, the first respondent has invited tenders on earlier occasion on 10.09.2002 towards collection of parking fee in Chennai Mofussil Bus Terminal in Koyambedu, Chennai, through an advertisement in a Tamil daily by tender notification dated 6.9.20 02. The upset price for the above tender was fixed at Rs.25 lakhs, wherein the petitioner has participated and made an offer of Rs.32,05,0 00/-. On 27.9.2002, when the tenders were opened, the petitioner was declared as the highest bidder. Thereafter, since the petitioner did not receive any communication from the first respondent, he has submitted a representation dated 16.10.2002 to the first respondent to allot the contract in his favour as early as possible. However, to his shock and surprise, the tender was cancelled on 25.10.2002 by the first respondent without assigning any reasons. Subsequently, the first respondent has invited fresh tender notification dated 23.10.2002, once again through their advertisement in a newspaper called 'Dinabumi' on 26.10.2002, which was opened on 13.11.2002. In the subsequent tender, the second respondent was selected as the successful bidder, even though he has quoted a lesser amount in the previous tender which was opened on 27.9.2002.

3. According to the petitioner, the first respondent ought not to have called for retender without even cancelling the earlier tender and the representation submitted by it was not considered and there is no transparency in awarding the contract

4. The first respondent has filed a counter-affidavit, disputing the various averments urged in the affidavit filed in support of the writ petition as well as the stay petition. The learned counsel for the first respondent contended that in the earlier tender, which was opened on 27.9.2002, three tenderers participated and even though the amount offered by the petitioner was the highest, a decision was taken by the first respondent to call for retender. In fact, the earlier tender was widely published in two leading newspapers. The learned counsel further contended that even though the tender submitted by the petitioner was rejected as early as on 25.10.2002, and the retender schedule was available for sale from 26.10.2002 till 12.11.2002 which was due to be opened on 13.11.2002, the petitioner has not availed the opportunity of purchasing the said tender schedules and participating the tender. The retender was also widely circulated as was done earlier which was opened in the presence of all the participants. It cannot be suggested that there was no transparency on the part of the first respondent in finalising the tender. According to the learned counsel, the terms and conditions of earlier tender notification clearly proceeds to the effect that the tender submitted by any individual can be cancelled without assigning any reasons. Further, the tender has to be finalised urgently, in view of the fact that the inaugural function of the bus terminal was fixed on 18.11.2002. Hence, immediately, after opening the retender on 13.11.2002, the same was finalised on 14.11.2002 and the work order was issued on the same day and the site was also handed over to the successful bidder viz., the second respondent on 14.11.2002 in order to make it ready on 18.11.2002. The learned counsel would further contend that in view of the interim order granted by this Court, the

second respondent was not permitted to make use of the site even though he has paid the entire amount.

5. The learned counsel for the second respondent would contend that the writ petition itself is frivolous and filed for mala fide reasons. The writ petition is not maintainable in law, inasmuch as the petitioner has not chosen to challenge the order wherein the tender submitted by him was cancelled. Further the petitioner, without even participating in the subsequent tender, has no right to seek a relief for awarding the contract since the second respondent has already participated in the tender and it was declared as a successful bidder and its tender was confirmed and the site was handed over to it.

6. The learned counsel for the second respondent would further contend that in view of the abovesaid litigation, the second respondent was not permitted to make use of the site, even though, it has made huge investments by depositing the amount as per the tender conditions to the first respondent. The learned counsel would further contend that in the event of dismissing the writ petition, instead of driving the second respondent to enter into further litigation with the first respondent, suitable direction may be issued to safeguard its interest, by permitting it to complete the full term of the contract viz., a period of one year and its right of renewal also shall be protected.

7. I have considered the various averments raised by the petitioner in the affidavit filed in support of the writ petition and the arguments advanced by the learned counsel for the respondents.

8. From the terms and conditions of the tender notification, the first respondent is entitled to cancel the tender submitted by any individual without assigning any reasons. In the instant case, admittedly, the petitioner has not challenged the order which was passed on 25.10.2002 wherein the tender submitted by the petitioner was cancelled. Even though the petitioner himself has admitted in paragraph-3 of the affidavit filed in support of the writ petition to the effect that he is aware of the cancellation of his tender on 25.10.2002, no explanation is offered as to why the said order was not challenged. Instead the petitioner has chosen to challenge the subsequent revised tender. It is also not disputed that the petitioner has not participated in the subsequent tender which was opened on 13.11.2002. Even though the subsequent tender was widely notified in newspapers as early as on 26.10.2002 and the last date to submit the tender schedule was fixed on 13.11.2002, on which date, the petitioner has not chosen to participate in the said tender. Even otherwise, if the petitioner claims that his earlier tender should be accepted as a matter of right, he should have challenged the order of the first respondent in cancelling the earlier tender.

9. As regards the averment to the effect that there is no transparency in finalising the tender, the petitioner has not made out a case inasmuch as the tender was notified in newspaper and no restriction is imposed upon any individual from participating in the said tender and the tenders were

opened in the presence of all the participants. In the absence of any specific materials, the mere allegation in the affidavit filed in support of the writ petition to the effect that there was no transparency in finalising the tender is not acceptable. Further, the petitioner has chosen to file the above writ petition only on 15.11.2002 viz., subsequent to the finalisation of the entire tender process on 14.11.2002.

10. For the reasons stated above, in view of the fact that the petitioner has failed to challenge the order cancelling his earlier tender; that even though sufficient time was available for the petitioner to participate in the subsequent tender, he has not availed the said opportunity; in the absence of any materials to substantiate that there was no transparency in finalising the tender; the above writ petition having been filed after the finalisation of the entire tender process; the petitioner cannot succeed in the writ petition and no relief can be granted.

11. As regards the plea of the learned counsel for the second respondent to the effect that in view of the above litigation, it could not make use of the site effectively as per the agreement entered into between the first respondent and the second respondent and accordingly, necessary directions can be issued to avoid multiplicity of proceedings and to render complete justice. In this connection, it is useful to refer the observation of the Apex Court in its decision rendered in B.R.RAMABHADRIAH vs. SECRETARY, FOOD AND AGRICULTURE DEPARTMENT, ANDHRA PRADESH (AIR 1981 SC 1653) which reads as hereunder:-

"The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds."

12. Similarly, their Lordships of the Supreme Court in Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another vs. K.S.Jagannathan and another (1986 (2) SCC 679) laid down that in a proper case in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions. The relevant observation of the Apex Court in the said decision proceeds as set out hereunder:-

"Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath vs. ITO (1965 (3) SCR 536, 540: AIR 1966 SC 81) this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In Hochtief Gammon vs. State

of Orissa (1976 (1) SCR 667,676:1975 (2) SCC 649: 1975 SCC (L&S) 362: AIR 1975 SC 2226) this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers."

13. It is also trait and principle of law as laid down by the Supreme Court in the case of Jagat Dhish vs. Jawaharlal, reported in AIR 1 961 SC 832, as under:-
"There can be no doubt that the litigant deserves to be protected against the default committed or negligence shown by the Court or its officers in discharge of their duties and it is one of the first and highest duties of all the Courts is to take care that the act of the Court does no injury to any of the suitors."

14. The Apex Court in its decision rendered in BEG RAJ SINGH vs. STATE OF U.P. AND OTHERS (2003 (1) SCC 726) has observed as follows:-
"Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the petitioner. No auction has taken place. No third-party interest has been created."

15. The Supreme Court in Civil Appeal No.1058 of 2002 in S.Ganesan vs. The District Collector, Tiruchirapalli by following the decision rendered in V.Karnal Durai vs. District Collector, Tuticorin (1999 (1) SCC 475) has granted relief to the aggrieved party therein by permitting him to operate the quarry lease for the full term, whose lease period has expired for no fault of him.

16. A Division Bench of this Court in its decision rendered in District Collector, Erode District, Erode vs. M.Ponnusamy (2001 (2) CTC 4 49) has held that the High Court, under Article 226 of the Constitution, has the discretion to frame a proper order and appropriate relief which would suit the exigencies of the case and the Court cannot dismiss the petition on a mere ground that proper relief has not been asked for.

17. In the light of the above principles, I am inclined to consider the plea made by the learned counsel for the second respondent in the factual back drop of the case.

18. A perusal of the terms and conditions of the agreement entered into between the first and the second respondent proceeds as hereunder:-

"(1) The written Agreement to be entered into between the Lessee and Chennai Metropolitan Development Authority shall be the foundation of all rights of both the parties and the contract shall not be deemed to be complete

until the Agreement has first been signed by the Lessee and then by the proper officer authorised (Superintending Engineer) to enter into contract on behalf of Chennai Metropolitan Development Authority.
(a) The period of contract will be one year reckoned from the date of commencement. The date of commencement will be the date on which site premised in handed over to Lessee.
... ...
... ...

(3) Though the Lease is initially for one year, the performance of the Lessee will be reviewed once in six months. If the performance is found to be satisfactory then the lease shall be renewed with an increase of 5% over the current value. In which case the lessee has to remit this increased value in one lumpsum before the expiry of the current lease and to execute fresh agreement. If the performance on the contrary is found unsatisfactory, the lease will be terminated by the CMDA with 30 days advance notice, in which case the deposits paid will be forfeited."

In the light of the above clauses in the agreement entered into between the first and the second respondents and in view of the principles laid down by the Apex Court and this Hon'ble Court in the decisions referred supra, instead of forcing the second respondent to drive into further litigation, a direction is issued to the first respondent to the effect that the second respondent shall be permitted to complete the entire term of one year by calculating the same from the date on which it will be permitted to make use of the site hereafter consequent to the order passed herein. There will be a further direction to the first respondent to give effect to the right of renewal to the second respondent for a further period as per clause-3 as referred supra, as and then the period of lease comes to an end.

19. For the reasons stated above, the writ petition is dismissed with the direction as stated above. No costs. Consequently, connected WPMP and WVMP are also dismissed.

Index :Yes
Internet :Yes
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To

The Superintending Engineer-II,
Construction Wing,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai-600 008.

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